

STORAGE NAME: h1355a.in.doc
DATE: February 13, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 1355
RELATING TO: Public Records/Workpapers
SPONSOR(S): Representative Mealor
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE YEAS 12 NAYS 0
 - (2) STATE ADMINISTRATION
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

Under Article I, Section 24, Florida Constitution, records and meetings of public bodies must be open to the public in the absence of an express exemption granted by the Legislature.

Workpapers, or portions of workpapers, prepared by the Department of Insurance (department) or received by the department from an insurance supervisory official of another state or federal agency for the use of the department in the performance of examinations or investigations would be exempt under the Public Records Law. As a result, the department would not be required to permit the public to copy or inspect these records.

The exemption would be subject to the Open Government Sunset Review Act of 1995, and stand repealed on October 2, 2007, unless reviewed and saved from repeal through enactment of the Legislature.

The bill would create a public necessity statement as required by Article I, s. 24, of the Florida Constitution. The stated public necessity justifying the exemption of these public records would be that the exemption is necessary for the effective and efficient administration of a government program and that disclosure could reveal confidential information contained in an examination or investigation report, harm certain state regulatory interests and, since workpapers are by their nature more prone to being incomplete, the interests of businesses and their employees.

The bill would have no fiscal impact on state government or on local governments.

On February 13, 2002, the Committee on Insurance adopted an amendment that is traveling with the bill. Please see Section VI of this analysis for a detailed explanation of the amendment.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Records Law

Florida Constitution

Article I, s. 24(a), Florida Constitution, expresses Florida's public policy regarding access to government records as follows:

Every person has the right to inspect or copy any public records made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Article I, s. 24(c), Florida Constitution, does, however, permit the Legislature to provide by general law for the exemption of records from the requirements of s. 24. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Florida Statutes

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1)(a), F.S., provides:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee.

Open Government Sunset Review Act of 1995

Section 119.15, F.S., the Open Government Sunset Review Act of 1995, provides that an exemption may be created or maintained only if it serves an identifiable public purpose and may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes, and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

The Department of Insurance Examination and Investigative Reports

Typically, examination reports are conducted to examine the affairs, transactions, accounts, and records relating directly or indirectly to the insurer and of the assets of the insurer's managing general agents and controlling persons.¹ Examination reports, until filed, are confidential and exempt from the public records law.²

Investigation reports are conducted by the department when there is reasonable, good faith belief that it could lead to the filing of an administrative, civil or criminal investigation. An investigation is considered to be "active" while it is being conducted by the department with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings. After an investigation has been completed or ceases to be active, portions of the investigation report relating to the investigation remain confidential and exempt if release would jeopardize the integrity of another active investigation; impair the safety and financial soundness of the licensee or affiliated party; reveal personal financial information on the identity of a confidential source; defame the good name or reputation of an individual; jeopardize the safety of an individual; or reveal investigative techniques or procedures. Therefore, investigation reports are confidential and exempt, until the investigation has been completed or ceases to be active.

Workpapers or any other information received by the department, which may include reports and correspondence from other states, draft reports, notes, or memorandums, are not exempt from disclosure under the Public Records Law.³ Because workpapers and other information is subject to

¹ 624.315, F.S..

² 624.319, F.S.

³ 119(1)(a), F.S.

the Public Reports Law, often examiners are unable to obtain confidential information from other states in the performance of examinations or investigations being conducted in this state.

C. EFFECT OF PROPOSED CHANGES:

Public Records/Workpaper Exemption

Workpapers, or portions of workpapers, prepared by the Department of Insurance (department) or received by the department from an insurance supervisory official of another state or federal agency for the use of the department in the performance of examinations or investigations would be exempt from disclosure to the public under the Public Records Law.

Sunset Review

The exemption would be subject to the Open Government Sunset Review Act of 1995, and stand repealed on October 2, 2007, unless reviewed and saved from repeal through enactment of the Legislature.

Statement of Public Necessity

The bill would include a public necessity statement as required by Article I, s. 24, of the Florida Constitution. The stated public necessity justifying the exemption of these public records would be that the exemption is necessary for the effective and efficient administration of a government program. Disclosure could:

- reveal the contents of examination reports, which are otherwise confidential until filed;
- reveal the contents of investigation reports which are otherwise confidential until the investigation has been completed or ceases to be active;
- harm the state's interest in assuring the integrity of the regulatory process; and
- harm the business of a regulatory entity or an employee of that entity, since workpapers, by the nature of their incompleteness, have a higher risk of containing inaccurate information about insurers and persons.

D. SECTION-BY-SECTION ANALYSIS:

See "EFFECTS OF PROPOSED CHANGES"

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

None

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 13, 2002, the Committee on Insurance adopted the following amendment to the bill:

The amendment by the Committee on Insurance (page 2, line 15 through page 3, line 27): The amendment makes conforming changes in usage throughout the bill, includes workpapers and other information received from the National Association of Insurance Commissioners (NAIC) in connection with investigations and examinations within the exemption; requires the receiving governmental entity or the NAIC to maintain the confidential and exempt status of the workpapers and other information; provides that information made confidential and exempt may be used in a criminal, civil, or administrative proceeding as long as the confidential and exempt status is maintained; and includes an additional reason for the exemption in the public necessity statement—that disclosure of the information would impair the Department's ability to gather information or be misleading because it is incomplete.

VII. SIGNATURES:

COMMITTEE ON INSURANCE:

Prepared by:

Staff Director:

Monique H. Cheek

Stephen Hogge